Supreme Court, U.S.
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No. 01-1594

IN THE

Supreme Court of the United States

ALCAN ALUMINUM CORPORATION,

Petitioner,

v.

PRUDENTIAL ASSURANCE COMPANY LIMITED, *et al.*,

Defendants,

-and-

CERTAIN UNDERWRITERS AT LLOYD'S OF LONDON,

Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

BRIEF IN OPPOSITION FOR RESPONDENT CERTAIN UNDERWRITERS AT LLOYD'S OF LONDON

JAY R. SEVER
MARIAN T. HARRISON
365 Canal Street
Suite 2000
New Orleans, LA 70124
(504) 566-1311

H. ALSTON JOHNSON, III
Counsel of Record
PHELPS DUNBAR LLP
445 North Boulevard
Suite 701
Baton Rouge, LA 70802
(225) 346-0285

Attorneys for Respondent

174192

COUNSEL PRESS
(800) 274-3321 • (800) 359-6859

APP 90

QUESTIONS PRESENTED

(1) Is there a compelling reason to grant a petition for writ of certiorari where the issues involved are of no consequence beyond the petitioner's monetary self-interest?

(2) Did the District Court properly tax against Alcan the costs of Underwriters' supersedeas bond pending Alcan's appeal?

(3) Did Alcan establish that the District Court Clerk's Office was "inaccessible" on the day after Thanksgiving or that the day after Thanksgiving is declared a holiday in California?

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STATEMENT OF JURISDICTION

The United States Court of Appeals for the Ninth Circuit ("Ninth Circuit") entered its judgment on January 24, 2002. Alcan Aluminum Corporation ("Alcan") filed its petition for writ of certiorari on April 23, 2002 and the matter was placed on the docket on April 29, 2002. Alcan asserts jurisdiction in this Court based on 28 U.S.C. § 1257(a).

STATEMENT OF CASE

This case arises from an insurance coverage dispute between Alcan and its primary and excess insurers regarding Alcan's coverage for liability Alcan incurred in the *United States v. Stringfellow* and *Newman v. Stringfellow* lawsuits. Plaintiffs in those lawsuits sued Alcan because of its disposal activities at the Stringfellow Acid Pit Site in Riverside, California ("Stringfellow Site"). In 1995, Alcan filed suit against certain of its insurers seeking recovery of defense costs and indemnity payments incurred due to the *United States v. Stringfellow* and *Newman v. Stringfellow* claims.[1]

On June 19, 1997, the United States District Court for the Central District of California ("District Court") entered judgment in favor of Alcan against Underwriters for $1,544,302.53. On July 18, 1997, the District Court entered an amended judgment which was, as to the issues presently before this Court, identical to the June 19, 1997 judgment.

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1. The underlying lawsuits involved numerous claims for property damage and bodily injury allegedly caused by hazardous materials disposed of at the Stringfellow Site.

On August 1, 1997, Alcan appealed various rulings of the District Court's July 18, 1997 amended judgment to the Ninth Circuit. In particular, Alcan sought an increase in the amount of the judgment rendered against Underwriters. Because Alcan, the prevailing party, had appealed the District Court's judgment, Underwriters asserted that the execution of the judgment was automatically stayed and cited the United States Supreme Court decision, *Bronson v. LaCrosse & M. R. Co.*[2] The District Court disagreed with Underwriters' assertion and ordered Underwriters to pay the judgment on October 6, 1997. In response, Underwriters posted a supersedeas bond in the amount of $1,132,341.06 (which reflects the gross judgment of $1,544,302.53 less the proportionate share of insolvent non-represented companies) on November 21, 1997. Alcan was dissatisfied with the supersedeas bond and threatened to execute on the judgment. Thus, Underwriters filed an *ex parte* motion seeking clarification that Underwriters were entitled to post a supersedeas bond under the District Court's October 6, 1997 order. On November 24, 1997, the District Court granted Underwriters' *ex parte* motion and allowed the posting of the bond.

Alcan appealed the District Court's November 24, 1997 ruling to the Ninth Circuit, asserting that the District Court had erred in allowing Underwriters to post a supersedeas bond. On March 31, 1999, the Ninth Circuit held that execution of the District Court's July 18, 1997 judgment was automatically stayed because Alcan, as the prevailing party, had appealed the District Court's judgment. In addition, the Ninth Circuit found that Underwriters should not have been

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2. 68 U.S. 405, 17 L. Ed. 616, 1 Wall 405 (1863).

required to post a supersedeas bond. In particular, the Ninth Circuit stated, in pertinent part:

> [O]nce Alcan filed its appeal challenging the merits of the district court's allocation order, the execution of the judgment against its insurers was automatically stayed. . . . The supersedeas bond actually provided Alcan protection that it was not entitled to because a bond was not required to stay the execution of the judgment in this case.[3]

Based on the Ninth Circuit's opinion that the District Court's judgment had been automatically stayed by Alcan's appeal, Underwriters filed a Motion for Adjustment of Post-Judgment Interest in the District Court on July 27, 1999. Underwriters argued that post-judgment interest should not have accrued during the time period of Alcan's appeal because the judgment was automatically stayed during the pendency of that appeal. Underwriters also argued that the inception of post-judgment interest should be the entry date of the District Court's amended judgment (July 18, 1997). In response, Alcan asserted that Underwriters should not benefit from the Ninth Circuit's judgment because Underwriters did not appeal the order regarding the posting of the supersedeas bond.

On August 23, 1999, the District Court granted Underwriters' motion and held in pertinent part that: (1) the proper post-judgment interest inception date is July 18, 1997; (2) post-judgment interest is owed from July 18, 1997 (date of the amended judgment) to August 1, 1997 (date Alcan

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3. *Alcan Aluminum Corp. v. Prudential, et al.*, 173 F.3d 859, 1999 WL 201610 (9th Cir 1999), p. 4.

filed its appeal) and from August 2, 1999 (date the Ninth Circuit's mandate was filed and spread in the District Court) until the date the judgment is paid; and (3) post-judgment interest did not accrue during the pendency of Alcan's appeal because the appeal resulted in an automatic stay of the District Court's judgment.

On November 29, 1999 (the Monday after Thanksgiving day), Alcan filed its Notice of Appeal on the post-judgment interest issues. On January 24, 2002, the Ninth Circuit held that Alcan's appeal on this issue was untimely and, thus, that it had no jurisdiction to hear the appeal because the timely filing of a notice of appeal is "mandatory and jurisdictional." Alcan's appeal was untimely because the Notice of Appeal was due on November 26, 1999, the Friday after Thanksgiving, and Alcan filed its Notice of Appeal on November 29, 1999, the Monday after Thanksgiving. The Ninth Circuit ruled that Alcan's appeal was not timely filed because it was filed three days late and because Alcan failed to show that the District Court Clerk's Office was "inaccessible" on the day the appeal was due (the Friday after Thanksgiving) or that the Friday after Thanksgiving was "declared a holiday" in California.[4] On this Court, Alcan seeks review of this ruling and of the post-judgment interest issues.

On August 11, 1999, Underwriters filed a Bill of Costs with the Clerk of Court to recover the bond premiums they had paid to post the supersedeas bond. The Clerk of Court, however, denied Underwriters' Bill of Costs. Underwriters then filed a motion with the District Court to reverse the Clerk of Court's ruling, asserting that the federal and local rules of Civil Procedure provide that premiums paid for a

4. Fed. R. App. P. 26(a)(3) and (4).

supersedeas bond should be taxed in favor of the prevailing party. On December 6, 1999, the District Court ruled in Underwriters' favor and ordered Alcan to pay Underwriters' bond costs. Alcan also appealed this ruling to the Ninth Circuit. On January 24, 2002, the Ninth Circuit affirmed the District Court's judgment awarding Underwriters their supersedeas bond costs. The Ninth Circuit held that because the District Court's July 18, 1997 judgment was automatically stayed during the pendency of Alcan's appeal: (1) Alcan had no right to force Underwriters to pay the judgment; (2) Underwriters were not required to post the bond; and (3) the bond actually served to protect Alcan's interests.[5] Alcan also seeks review of this ruling.

CLARIFICATION

Counsel are obligated to advise this Court of any perceived misstatements of the law or fact made in petition for writ of certiorari.[6] Accordingly, Underwriters note the following.

Alcan asserts that the Ninth Circuit "created a new right in the district court to permit it to assign costs of the insurer's bond. . . ." The District Court's order requiring that Alcan pay Underwriters' bond costs is based on local court rules and the Federal Rules of Appellate Procedure, which provide

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5. *Alcan Aluminum Corp. v. Prudential, et al.*, 173 F.3d 859, 1999 WL 201610, p. 4 (9th Cir. 1999). ("The supersedeas bond actually provided Alcan protection that it was not entitled to because a bond was not required to stay execution of the judgment in this case.")

6. U.S. Sup. Ct. Rule 15(2).

that costs on appeal, including premiums paid for a supersedeas bond, are taxable for the benefit of the party entitled.[7]

REASONS FOR DENYING THE WRIT

I. Alcan Fails To Raise An Important Federal Question Or Articulate A Compelling Reason To Justify Discretionary Review By This Court.

Supreme Court review on a writ of certiorari is a matter of judicial discretion, which is granted only for "compelling" reasons.[8] Under U.S. Sup. Ct. Rule 10, there are certain factors which the Supreme Court considers in determining whether to grant a petition for writ for certiorari. In sum, these factors include: (1) whether either a United States Court of Appeal or a state court of last resort has entered a conflicting decision on the same important matter; (2) whether such a decision has so far departed from the accepted and usual course of judicial proceedings or sanctioned such a departure by a lower court as to call for an exercise of the Supreme Court's supervisory powers; (3) whether a court has decided an important question of federal law that has not been, but should be, settled by the Supreme Court; or (4) whether a court has decided an important federal question in a way that conflicts with relevant decisions of the Supreme Court. U.S. Sup. Ct. Rule 10 further provides that "[a] petition for writ of certiorari is

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7. Fed. R. App. P. 39(e) and Local Rule 16.4.15 for the United States Central District of California.

8. U.S. Sup. Ct. Rule 10, 28 U.S.C.A.

rarely granted when the asserted error consists of erroneous factual findings or the misapplication of a properly stated rule of law."

Alcan's petition fails to: (1) meet any of the criteria set forth by Sup. Ct. Rule 10; (2) raise any compelling reason for review of the Ninth Circuit's judgment by this Court; or (3) present an important federal question. Indeed, the Ninth Circuit's judgment does not conflict with the decision of another United States court of appeals, a state court of last resort or with a decision of this Court.

With regard to whether a petition for writ of certiorari should be granted, this Court has stated the following:

- [I]t is very important that we be consistent in not granting the writ of certiorari except in cases involving principles the settlement of which is of importance to the public, as distinguished from the parties, and in cases where there is a real and embarrassing conflict of opinion and authority between the Circuit Courts of Appeals.[9]

- [T]his Court does not sit to satisfy a scholarly interest. . . . Nor does it sit for the benefit of particular litigants.[10]

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9. *Rice v. Sioux City Memorial Park Cemetery, Inc.* 349 U.S. 70, 79, 75 S. Ct. 614, 619-620, 99 L. Ed. 897 (1955), *citing Layne & Bowler Corp. v. Western Well Works, Inc.*, 261 U.S. 387, 393, 43 S. Ct. 422, 423, 67 L. Ed. 712 (1923).

10. *Id.*, 349 U.S. at 74, 75 S. Ct. at 616 (citations omitted).

Alcan has failed to present a compelling reason for this court to exercise its discretionary judicial review as Alcan seeks review of issues, which are of no significance to the public, but rather are of consequence only to Alcan's own monetary interest. Specifically, Alcan seeks review of the Ninth Circuit's rulings that Alcan was obligated to pay Underwriters' bond costs and that Alcan's Notice of Appeal was not timely filed. Although not addressed by the Ninth Circuit, Alcan also seeks review of the District Court's judgment that post-judgment interest accrued from the date of the amended judgment (July 18, 1997) and that post-judgment interest did not accrue during the pendency of Alcan's appeal. These rulings obviously have no precedential value to warrant this Court's discretionary review. In addition, it is evident that the outcome of the issues Alcan appeals lack national significance. The outcome of the issues will only affect whether Alcan is obligated to pay Underwriters' bond costs, whether Alcan timely filed its appeal on the post-judgment interest issues and whether post-judgment interest was properly calculated.

II. The District Court Properly Taxed Underwriters' Bond Costs Against Alcan.

Alcan seeks review of the Ninth Circuit's ruling affirming the District Court's taxing of Underwriters' bond costs against Alcan. Federal Rule of Appellate Procedure 39(e) provides that ". . . costs on appeal are taxable in the district court for the benefit of the party entitled to costs under this rule. . . ." This rule includes premiums paid for a supersedeas bond.[11] The plain language of Rule 39(e) shows that the taxation of costs is mandatory. In addition, Federal Rule of Appellate

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11. Fed. R. of App. P. 39(e).

Procedure 39(a) provides, in effect, that the prevailing party is entitled to costs, *i.e.* "if a judgment is affirmed, costs are taxed against the appellant." Because the insurers, including Underwriters, prevailed at the Ninth Circuit, they were clearly entitled to costs. In fact, the Ninth Circuit expressly stated that "[c]osts are awarded to defendants-appellees General, Lloyd's, Home and Continental."[12]

The taxing of Underwriters' bond costs against Alcan is further supported by the Ninth Circuit's ruling that Underwriters were not required to post the bond.[13] Based on the foregoing, it is clear that bond costs were properly awarded to Underwriters and that this issue does not require this Court's review.

III. The Issue Of Whether Alcan Timely Filed Its Appeal Does Not Warrant This Court's Review.

It is undisputed that Alcan filed its appeal three days late. The only issue before the Ninth Circuit was whether Alcan established that the District Court Clerk's Office was "inaccessible" on the day after Thanksgiving (November 26, 1999) when the appeal was due or whether that day was "declared a holiday" in California.[14] The lower court's findings that the Clerk's Office was not "inaccessible" and that the day after Thanksgiving was not "declared a holiday" are factual findings, which cannot be reversed absent a

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12. *Alcan*, 173 F.3d 859, 1999 WL 201610 at p. 4.

13. *Id.*

14. Fed. R. App. P. 26(a)(3) and (4); *Keyser v. Sacramento City Unified Sch. Dist.*, 265 F.3d 741 (9th Cir. 2001).

conclusion that the factual findings are clearly erroneous. According to Sup. Ct. Rule 10, "a petition for writ of certiorari is rarely granted when the asserted error consists of erroneous factual findings or the misapplication of a properly stated rule of law." On this basis alone, this Court should decline to review this issue.

Further, the lower courts' conclusion that Alcan failed to show that the Clerk's Office was "inaccessible" on the day after Thanksgiving when the appeal was due or that the day was "declared a holiday" in California is supported by the record and is not clearly erroneous. This Court has held that a court of appeals is without jurisdiction to review the merits of a case, where the notice of appeal was not timely filed.[15] Thus, the Ninth Circuit correctly dismissed Alcan's appeal on the post-judgment interest issues.

IV. Post-Judgment Interest Did Not Accrue During The Pendency Of Alcan's Appeal Because The Execution Of The Judgment Was Automatically Stayed.

Even if Alcan's appeal had been timely filed, Underwriters would have prevailed on the merits. Alcan asserts that it has been penalized for appealing the District Court's judgment by the denial of post-judgment interest during the pendency of its appeal. The Ninth Circuit, however, ruled that the execution of the District Court's judgment was automatically stayed by Alcan's appeal of that judgment.[16] In so holding, the Ninth Circuit relied on a

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15. *Budinich v. Becton Dickinson & Co.*, 486 U.S. 196, 108 S. Ct. 1717, 100 L. Ed. 2d 178 (1988).

16. *Alcan*, 173 F.2d 859, 1999 WL 201610 at p. 4.

decision of this Court, *Bronson v. La Crosse & M. R. Co.*, which closely resembles this case in that an appeal was filed by victorious plaintiffs.[17] In *Bronson*, this Court stated that because the plaintiffs had appealed the judgment, "it would be against all reason and principle to permit them to proceed in the execution of it, pending the appeal."[18] This Court also specifically stated that "[t]he appeal suspends the execution of the decree."[19] Accordingly, because execution of the judgment was suspended and post-judgment does not accrue on a judgment that is not due, the District Court properly ruled that post-judgment interest did not accumulate during the pendency of Alcan's appeal.

Alcan asserts that the United States Court of Appeals for the Fifth Circuit's decision in *Enserch Corp. v. Shand Morahan & Co., Inc.* conflicts with the lower courts' ruling that Alcan's appeal suspended execution of the judgment.[20] In actuality, that decision is not in conflict. Rather, the *Enserch* decision more narrowly interprets *Bronson*. In particular, the Fifth Circuit concluded that "*Bronson* suggests that a lower court judgment may be suspended without bond when the relief sought by the prevailing party on appeal is inconsistent with enforcement of the lower court's judgment."[21] The relief sought by Alcan in the underlying appeal was inconsistent with the District Court's judgment.

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17. 68 U.S. 405, 17 L. Ed. 616, 1 Wall. 405 (1863).

18. 68 U.S. (1 Wall) at 409-410.

19. *Id.* at 410

20. 918 F.2d 462 (5th Cir. 1990)

21. 918 F.2d at 464.

In particular, Alcan appealed the District Court's allocation ruling, alleging that the District Court's decision was legally unfounded and should be reversed. For this reason, enforcement of the judgment would have been inconsistent with the relief sought in Alcan's appeal. As such, even under *Enserch*, Alcan's appeal effected an automatic stay of the judgment against Underwriters and Underwriters were not required to post a bond. Thus, it is clear that *Enserch* does not conflict with the ruling at issue here.

Based on the foregoing, it is evident that the District Court's ruling is not in conflict with a decision of any court and that the result of Alcan's appeal has no significance beyond Alcan's monetary self-interest. Thus, this issue does not merit review.

V. The Date Of The Amended Judgment Is The Correct Inception Date For The Accruement Of Post-Judgment Interest.

Under 28 U.S.C. § 1961(a), "interest shall be calculated from the date of entry of judgment." While the District Court initially entered judgment on June 19, 1997, that judgment was clarified and the amended judgment was entered on July 18, 1997. Because the amended judgment was entered on July 18, 1997, that is the earliest date from which post-judgment interest can accrue. Thus, the District Court correctly ruled that post-judgment interest began accumulating on July 18, 1997. Because the lower court's conclusion on this issue was correct and the result is only of consequence to Alcan, this Court should decline to review it.

CONCLUSION

Alcan has fallen well short of articulating a compelling reason to justify the exercise of this Court's discretionary review. The issues involved have no importance beyond Alcan's monetary self-interest. The lower courts' rulings do not conflict with a decision of this court. The rulings have no precedential value and do not affect any matter of public consequence. Alcan's petition should be denied.

Respectfully submitted,

H. ALSTON JOHNSON, III
Counsel of Record
PHELPS DUNBAR LLP
445 North Boulevard
Suite 701
Baton Rouge, LA 70802
(225) 346-0285

JAY R. SEVER
MARIAN T. HARRISON
365 Canal Street
Suite 2000
New Orleans, LA 70124
(504) 566-1311

Attorneys for Respondent